

UNITED STATES OF AMERICA  
UNITES STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT NO. 368 72 0433  
Issued to: Floyd A. Paquin, Jr.

DECISION OF THE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2285

Floyd A. Paquin, Jr.

This appeal was taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 29 April 1982, an Administrative Law Judge of the United States Coast Guard at St. Ignace, Michigan revoked Appellant's seaman's document upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found proved alleged that while holding the document above captioned, on or about 23 March 1982, Appellant was convicted by the 92nd District Court, State of Michigan, a court of record, at the Mackinac County Court House, St. Ignace, Michigan, for possession of marijuana.

The hearing was held at St. Ignace, Michigan on 29 April 1982. At the hearing elected to act as his own counsel and entered a plea of not guilty to the charge and to the specification.

The Investigating Officer introduced in evidence the Affidavit of Service of the charge sheet, the Judgement of Sentence signed by District Judge Robert A. Wood, 92nd District Court, State of Michigan, dated March 23, 1982, and a letter which indicated that, according to Coast Guard files, Appellant had no prior disciplinary record.

In defense, Appellant offered in evidence two letters attesting to his character signed by Keith L. Pollsbury, Chief of Police, St. Ignace, Michigan, and Walter E. Berg, Chief Engineer of the CHIEF WAWATAM. Three relatives of Appellant testified as to his character.

At the end of the hearing, the Administrative Law Judge served a written order on Appellant in which he stated that the charge and the specification had been proved and revoked on the document issued to Appellant.

The decision was served on 13 May 1982. Appeal was timely filed and perfected on 25 May 1982.

### FINDINGS OF FACT

1. On March 23, 1982, Appellant, the holder of Merchant Mariner's Document No. 368 72 0433, issued to him by the United States Coast Guard, was convicted by the 92nd District Court, State of Michigan, a court of record as defined by 46 CFR 5.03-15, for possession of marijuana.
2. The regulation at 46 CFR 5.03-10(a) states that "...the administrative law judge shall enter an order revoking the seaman's licenses, certificates, and documents..." after proof of a narcotics conviction by a court of record.
3. The term "narcotic drug" is defined at 46 U.S.C. 239a (a), and includes the drug "marijuana."
4. On April 29, 1982, following a hearing held pursuant to 46 U.S.C. 239b, Appellant's document was revoked based upon his conviction in the 92nd District Court.
5. The regulation at 46 CFR 5.03-10(b) states that an order of revocation will be rescinded when a seaman submits satisfactory evidence that the court conviction on which the revocation is based has been set aside for all purposes.
6. On July 13, 1982, following a new trial in the 92nd District Court, Appellant provided a certified copy of an order dated 28 May 1982, issued by Judge Robert A. Wood, which dismissed for all purposes the cause of action which had resulted in the March 23, 1982 conviction for possession of marijuana.

### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

1. The Administrative Law Judge erred;
2. Appellant was not advised of the seriousness of the charge;
3. The cause of action which resulted in the conviction entered by the 92nd District Court on 23 March 1982, was dismissed at a new trial held on 28 May 1982, due to errors of law and/or mistakes of fact;

4. Appellant was not advised prior to the hearing that his license would be automatically revoked upon a finding of a conviction by a court of record for possession of marijuana;
5. Marijuana is commonly used by members of the Armed Forces;
6. The "Advice to Respondent" which was provided to Appellant at the hearing was given without sufficient notice and was misleading;
7. Appellant was not properly advised of his rights prior to the hearing; and
8. A certified record of Appellant's conviction by the 92nd District Court was not introduced into evidence.

#### OPINION

The charge and specification were proved based upon a conviction in a court of record for possession of marijuana, as evidence by the "Judgement of Sentence" issued by the 92nd District Court, State of Michigan.

Subsequent to the Administrative Law Judge's order, Appellant provided satisfactory evidence that his conviction had been set aside of all purposes.

#### CONCLUSION

The Administrative Law Judge's order must be rescinded because the conviction upon which the revocation was based has been set aside for all purposes. Since the case is disposed of on this ground, the other bases of appeal are rendered moot and need not be discussed.

#### ORDER

The ORDER of the Administrative Law Judge dated at St. Ignace, Michigan on 29 April 1982, is VACATED. The charge is DISMISSED without prejudice to the institution of further proceedings.

J. S. GRACEY  
Admiral, U.S. Coast Guard  
Commandant

Signed at Washington, D.C., this 8th day of October 1982.